

TITLE 11
DEPARTMENT OF HEALTH
CHAPTER 17
TATTOO ARTIST

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Historical Note: Chapter 17 of Title 11, Administrative Rules, is based substantially on Public Health Regulations Chapter 26, Tattoo Artist, Department of Health, State of Hawaii. [Eff. 9/23/49, am 1/31/58, am 6/29/64; R SEP 18 1981]

§11-17-1 Scope of rules. This chapter sets forth minimum requirements for the safety and protection of public health. When standards, ordinances, or rules are established by other divisions or subdivision of government, the more stringent state or county rules shall apply. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-2 Definitions. As used in these rules:

“Adequate,” “approved,” and “proper,” mean the procedure is acceptable to the director based on the determination as to its conformity with aseptic techniques.

“Aseptic technique” means the practice which prevent and hinder the transmission of disease producing micro-organisms from one person or place to another person or place.

“Department” means the department of health of the State of Hawaii.

“Director” means the director of the department of health or a duly authorized agent or representative.

“License” means a license issued to a tattoo artist under this chapter.

“Permit” means a permit issued to a tattoo shop under this chapter.

“Single-service” means articles intended for one-time, one person use and then discarded.

“Tattoo artist” means one who engages in tattooing.

“Tattoo shop” means any premises where a tattoo artist does tattooing for a fee or for other consideration.

“Tattooing” means to mark or to color the skin by pricking and introducing subcutaneously, non-toxic dyes, pigments, or by the production of scars to form indelible marks and figures. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-3 Permit for tattoo shop; fee. (a) No person, partnership, firm, or corporation shall operate a tattoo shop unless such person, partnership, firm, or corporation has registered such shop with the department and has been issued a permit. No permit shall be issued or renewed unless the shop has been inspected by the director and found to be in compliance with the requirements of this chapter.

(b) The permit shall be non-transferable. A valid permit shall be posted in a conspicuous place in every tattoo shop.

(c) Each application under this section shall be accompanied by a fee of \$75 for a permit. For renewal of a permit, each applicant shall pay a fee of \$7.50.

(d) In the event of withdrawal of an application or failure to qualify for a permit, the fee shall not be refunded to the applicant.

(e) All permits shall expire on January 31 of each year. Application for the renewal of a permit shall be submitted to the department in writing before January 31 of each year. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-11, 321-13) (Imp: HRS §§321-11, 321-13)

§11-17-4 License for tattoo artist; fee. (a) No person shall practice the art of tattoo unless the person holds a valid tattoo license issued by the department. A physician licensed to practice medicine in the State is exempt from this chapter.

(b) Any person desiring to engage in tattooing shall apply in writing to the director on the form provided by the department for this purpose. Any applicant who has not previously been issued a license by the director shall be required to pass a written examination before a license may be issued. The applicant shall be required to show by examination a knowledge of the provisions of this chapter including knowledge of bacteriology and aseptic techniques to assure that infection and contagious disease shall not be transmitted by tattoo practices.

(c) No license shall be issued or renewed unless the applicant has undergone a physical examination using report forms provided by the department. The examination shall include a chest x-ray or tuberculin skin test, and a blood test for syphilis. The physical examination record shall be kept on file in the tattoo shop by the permit holder.

(d) Each applicant shall pay an examination fee of \$75 for the initial license. For renewals of this license, the applicant shall pay a fee of \$7.50.

(e) In the event the applicant fails to qualify for a license or for renewal, that fee shall not be refunded to the applicant.

(f) All licenses shall expire on January 31 of each year. All applications for renewal of a license shall be submitted on the form provided by the department in writing before January 31 of each year. Delinquency shall be provided for in §321-15, HRS. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §§321-14, 321-15)

§11-17-5 Revocation or suspension of license or permit. (a) After due notice and hearing the director may suspend or revoke any license or permit issued under this chapter for violation of the provisions of this chapter.

(b) All revocation and suspension action shall not become effective nor final until an opportunity for a hearing has been offered the license or permit holder. All hearings shall comply with chapter 91, HRS and the department of health rules of practice and procedures. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-6 Sanitation requirements for a tattoo shop. A tattoo shop shall comply with the following requirements in order to qualify for an operating permit:

- (1) The owner or operator of a tattoo shop shall locate and construct the shop in areas least subjected to dust contamination.
- (2) The shop shall be maintained in a sanitary condition by the owner or operator.
- (3) The walls and ceilings shall be easily cleanable, smooth, and light colored. All walls and ceilings shall be kept clean and in good repairs.
- (4) All floors shall be of smooth non-absorbent materials and constructed so as to be easily cleanable. All floors shall be kept clean and in good repair.
- (5) Adequate light and ventilation shall be provided.
- (6) Each tattoo shop shall be provided with a sink for the exclusive use of the tattoo artist for hand washing and preparing the customers for tattooing. The sink shall be provided with adequate hot and cold running water under pressure with mixing valve or combination faucet. There shall also be available at the sink approved soap, clean single use towels, and refuse containers.
- (7) Water closet and hand basin shall be available on the premises for use by customers and tattoo artists. The plumbing fixtures and toilet room shall be maintained in a sanitary condition and in good repair.
- (8) Each tattoo artist shall be provided with an adequate work table and storage cabinets. The surface of all work tables shall be constructed of metal or other material which is smooth, light colored, non-absorbent, corrosive-resistant, and easily cleaned.
- (9) The work tables shall be located at least ten feet from observers and waiting customers or shall be separated with a panel or other barrier which shall be at least six feet high. The panel may be constructed with glass, solid plastic, or similar material.
- (10) Approved closed cabinets for the exclusive storage of instruments, dyes, pigments, carbon, stencils, and other paraphernalia used in the shop shall be provided for each tattoo artist.

- (11) The tattoo shop shall have covered receptacles for the disposal of waste materials.
- (12) Each tattoo artist shall have a hand brush and fingernail file which shall be cleaned and disinfected after each use.
- (13) "No smoking" signs shall be posted in the tattooing area.
- (14) Only tattooing shall be permitted in a tattoo shop. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-7 Restrictions. (a) It shall be unlawful to tattoo any person who is under the influence of intoxicating substances. These substances include but shall not be limited to alcohol, drugs, paints, and glues.

(b) It shall be unlawful to tattoo any person under the age of eighteen years without the written consent of the parents or legal guardian. All written consent shall be kept on file in the tattoo shop.

(c) No person with any disease in a communicable form or suspected of having such disease shall engage in tattooing. Such diseases may include but shall not be limited to the common cold, influenza, tuberculosis, scabies, impetigo, syphilis, chickenpox, measles (rubella), German measles (rubella), mumps, whooping cough, hepatitis, infection on hands or arms, sore throat or jaundice. The director may require a certificate signed by a duly licensed physician stating that the tattoo artist is free from communicable disease before returning to work. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-8 Equipment. Not less than twenty-four sets of sterilized needles and tubes or tips shall be on hand for the entire day or night operation. Sterilization shall be done by one of the following methods:

- (1) By holding in an autoclave for fifteen minutes at fifteen pounds pressure.
- (2) By immersion in an approved germicidal solution for an approved period of time. No rusty, dull, or faulty needles shall be used for tattooing.
- (3) Any other method approved by the director. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-9 Dyes. All dyes or pigments used in tattooing shall be from batches certified under the provisions of chapter 328, HRS. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-10 Aseptic technique. (a) Before working on a customer the tattoo artists shall cleanse their hands in the following manner:

- (1) Thoroughly scrub hands and fingernails with soap and a hand brush;
- (2) Rinse hands under warm running water;
- (3) Rinse hands in an approved antiseptic solution such as seventy per cent alcohol; and

- (4) Hands may be dried with clean single use towels or other approved hand drying device;
- (b) The area of the customer's skin to be tattooed shall be prepared by:
 - (1) Washing with warm water and approved soap. A sterile handbrush shall be used to produce a clean skin area;
 - (2) Shaving shall be done with a sterile razor blade; and
 - (3) The shaved area shall be thoroughly cleansed with warm water and approved soap.
- (c) Before placing the design on the customer's skin, the tattoo artist shall treat the skin area with seventy per cent alcohol or other approved germicidal solution which shall be applied with sterile cotton or sterile gauze.
- (d) Only petroleum jelly shall be applied to the area to be tattooed and it shall be in collapsible metal or plastic tubes. The application may be spread by the use of sterile gauze but not directly with the fingers.
- (e) The stencil for transferring the design to the skin shall be thoroughly cleansed and rinsed in an approved germicidal solution and dried with sterile gauze.
- (f) Single-service or individual portion of dyes or pigments in sterilized containers or single-service containers shall be used for each customer. After tattooing, the remaining unused dye or pigments in the single-service or individual containers shall be discarded.
- (g) As the tattoo operation progresses, any excess dye or pigment applied to the skin shall be removed with sterile material.
- (h) The completed tattoo shall be washed with a piece of sterile material saturated with an approved germicidal solution. Antibiotic ointment registered under United States Pharmacopoeia or National Formulary shall be applied from a collapsible metal or plastic tube and the entire area covered with a piece of sterile dressing, which may in turn be covered with a piece of tissue, and fasten to the site with an approved type of adhesive.
- (i) Immediately after tattooing, the tattoo artist shall advise the customer on the care of the tattoo and instruct the customer to consult a physician at the first sign of infection. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-11 Minimum operating standards. (a) The tattoo artist shall use standards of aseptic technique in tattooing, dressing, and other operations that are approved by the director.

- (b) The tattoo artist shall use only supplies and equipment approved by the director.
- (c) The minimum standards of §11-17-7 through §11-17-11 shall be observed at all times. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

§11-17-12 Records. (a) The permit holder shall maintain proper records of each customer. The records shall include the following information:

- (1) The date when the tattoo was applied.
- (2) The name, address and age of the customer.

- (3) The branch of service, rate or rank, and serial number of the customer if in the armed forces.
- (4) The design and location of the tattoo.
- (5) The name of the tattoo artist.
- (6) The signature of the customer.
- (b) The information required in subsection (a) shall be permanently recorded, in ink or indelible pencil, in a bound book kept solely for this purpose. This book shall be available at reasonable hours for examination by the director and shall be kept in the tattoo shop for two years from the date of last entry.
- (c) Written consents for persons under eighteen years of age shall be kept on file for two years in the tattoo shop. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

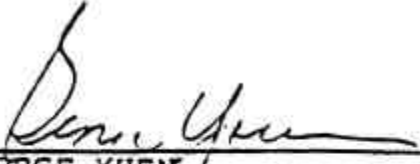
§11-17-13 Penalty. (a) Any person who shall knowingly or wilfully make any false statement to the department relative to any matter under this chapter or who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500 or imprisonment for not more than one year or both.

(b) Any person convicted under this section shall have the license and permit suspended for one year. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-18)


§11-17-14 Severability. Should any section, paragraph, sentence, clause, phrase or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected. [Eff. SEP 18 1981] (Auth: HRS §§321-10, 321-13) (Imp: HRS §321-13)

The Department of Health authorized the repeal of Chapter 26, Public Health Regulations and the adoption of Chapter 17 of Title 11, Administrative Rules on AUG 27 1981 following public hearing held on Maui on July 13, 1981, on Hawaii on July 14, 1981, on Oahu on July 15, 1981, on Kauai on July 20, 1981 after public notice was given in the Maui News on June 22, 1981, in the Hawaii Tribune-Herald on June 22, 1981, in the Honolulu Star-Bulletin on June 22, 1981, and in the Garden Isle on June 22, 1981.

Chapter 17 of Title 11, Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.


GEORGE YUEN
Director AUG 27 1981
Department of Health

APPROVED:


GEORGE R. ARIYOSHI
GOVERNOR
STATE OF HAWAII
Dated: 9-3-81

APPROVED AS TO FORM:


Deputy Attorney General

Filed: SEP 8 1981

Effective Date: SEP. 1, 1981

[PART XXX.] TATTOO ARTISTS

Note

This part is effective January 1, 1991. L 1990, c 285, §9.

Subject to reassessment, this part is repealed effective December 31, 1996. See chapter 26H.

Revision Notes

In this part, “part” substituted for “chapter”.

[§321-371] Purpose. The purpose of this part is the protection of public health and safety through the licensing and regulation of tattoo artists. [L 1990, c 285, pt of §2]

[§321-372] Definitions. As used in this part:

"Department" means the department of health.

"Director" means the director of health.

"Facial tattoo" means any tattoo applied above the jawline, anterior to the ear and frontal hairline including the eyelids, eyebrows, or lips.

"Tattoo artist" means any person who creates indelible marks or decorative designs by introducing pigments beneath the surface of the skin with the aid of needles, or other devices. [L 1990, c 285, pt of §21]

[§321-373] Regulation of tattoo artists. (a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician licensed under chapter 453 or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of ster-ilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.

(b) The rules may provide for general standards for facial tattoos. [L 1990, c 285. pt of §2]

[§321-374] License required; exemptions. (a) Except as otherwise provided by law, no person shall practice the occupation of tattoo artist in this State either gratuitously or for pay, or shall announce oneself either publicly or privately as prepared or qualified to practice that occupation without having a valid unrevoked license to do so.

(b) Physicians holding a valid unrevoked license under chapter 45 are exempt from the requirements of this part. [L 1990, c 285, pt of §2]

[§321-375] Examination, fees required. (a) No license shall be issued unless the applicant takes an examination as prescribed by the director and receives a passing score. No license shall be issued unless all fees required by the director have been paid.

(b) The department may contract with a professional testing service to pre-prepare, administer, and grade the examination for licensure as a tattoo artist. For these purposes, the department may require applicants to pay the examination fee directly to the testing service. [L 1990, c 285, pt of §2]

[§321-376] Facial tattoos. Application of facial tattoos shall be prohibited except by a physician licensed under chapter 453 or by a tattoo artist who is under the general supervision of such a physician. [L 1990, c 285, pt of §2]

[§321-377] Suspension or revocation of license. The director may revoke or suspend the license of any person licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

In every case where it is proposed to revoke or suspend a license, the director shall give the licensee concerned notice and a hearing. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91.
[L 1990, c 285, pt of §2]

[§321-378] Denial of licensure hearing. (a) No applicant shall be licensed as a tattoo artist if:

- (1) The applicant has been convicted of a crime and the basis of denial of licensure falls within exceptions provided in section 831-3.1;
- (2) The applicant has been declared mentally incompetent by any court and the decree has not since been dismissed; or
- (3) Proceedings brought against the applicant pursuant to this section resulted in findings of any of the causes listed in subsection 321-379(b).

(b) Any person whose application for licensure has been denied shall be given notice and the opportunity for a hearing. [L 1990, c 285, pt of §2]

[§321-379] Discipline; complaints; grounds; proceedings; hearings. (a) The director shall have the power to revoke, limit, condition, or suspend a license as a tattoo artist and to fine or otherwise discipline a licensed tattoo artist for any violation of subsection (b).

(b) The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, who is a licensed tattoo artist regarding the following allegations:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;
- (2) Habitual intemperance, addiction, or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice as a tattoo artist;
- (4) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure licensure as a tattoo artist, which is false or untrue or contains any material misstatement of fact;

- (5) Using the title, licensed tattoo artist, or any designation tending to imply that the person is a licensed tattoo artist when the person is not in fact licensed or the person's license has been suspended or revoked;
 - (6) Violating conditions or limitations upon which licensure occurs;
 - (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm an individual or the public in the course of professional services or activities;
 - (8) Having disciplinary action taken against the tattoo artist in another state;
 - (9) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of tide restrictions of this part;
 - (10) Engaging in false or misleading advertising; or
 - (11) Engaging in sexual conduct in connection with professional services or activities.
- (c) In any proceeding under this section the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.
[L 1990, c 285, pt of §2]

[§321-380] Penalties. (a) Any person against whom proceedings have been brought pursuant to section 321-379 which resulted in findings of any of the causes listed in subsection 321-379(b) may be assessed a fine of not less than \$100 nor more than \$5,000 for each offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) The director may bring a civil action to enjoin any person for violation of section 321-379(b). [L 1990. c 285. pt of §2]

[§321-381] Biennial renewal; failure to renew. The biennial renewal fee shall be paid to the department of health on or before December 31 of each, even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee on or before such date shall constitute a forfeiture of the license. [L 1990, c285, pt of §2]

[§321-382] Fees. The director may establish fees by rules pursuant to chapter 91.
[L 1990, c 285, pt of §2]

[§321-383] License without necessity of examination. All persons holding valid licenses as tattoo artists from the department of health and practicing on the day prior to January 1, 1991 shall be considered licensed under this part on January 1, 1991 without necessity of examination. [L 1990, c 285, pt of §2]

Revision Note

"January 1, 1991" substituted for "the effective of this Act."